

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY
NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

DEC 28 2009

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2009-0227-PR
)	DEPARTMENT B
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
STANLEY WADE STARR,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20032054

Honorable Christopher C. Browning, Judge

REVIEW GRANTED; RELIEF GRANTED

Terry Goddard, Arizona Attorney General
By John R. Evans

Tucson
Attorneys for Respondent

Stanley Wade Starr

Hinton, Oklahoma
In Propria Persona

V Á S Q U E Z, Judge.

¶1 In this petition for review, Stanley Wade Starr challenges the trial court's summary dismissal of his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. We review a trial court's ruling denying post-conviction relief for an abuse of discretion. *See State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). For the following reasons, we grant review and relief.

¶2 Starr was convicted after a jury trial of theft, conspiracy, and three counts of presenting a false instrument for filing. The trial court sentenced him to a combination of concurrent and consecutive prison terms totaling nine years. This court affirmed the convictions and sentences on appeal. *See State v. Starr*, No. 2 CA-CR 2005-0130 (memorandum decision filed Aug. 21, 2006). On April 13, 2009, Starr filed a notice and petition for post-conviction relief in the trial court and a motion in this court asking that we withdraw the mandate we had issued in his appeal on November 11, 2006. We granted that motion on April 20, 2009. On April 24, 2009, the trial court summarily dismissed the petition for post-conviction relief on grounds that it had been filed untimely.

¶3 Rule 32.4(a) provides that a notice in a post-conviction proceeding that does not involve a pleading defendant "must be filed within ninety days after the entry of judgment and sentence or within thirty days after the issuance of the order and mandate in the direct appeal, whichever is the later." Starr's notice was filed years after we issued the mandate in Starr's appeal in 2006 and without adequate explanation to excuse the late filing under Rule 32.2(b). However, at the time the trial court dismissed the petition, we had

already withdrawn that original mandate. We issued a second mandate on August 21, 2009, after the supreme court had denied review of our decision on appeal. Starr's petition for post-conviction relief therefore was timely.

¶4 The trial court dismissed Starr's notice and petition based entirely on its determination that the notice had been filed outside the time limits of Rule 32.4(a). Thus, although we recognize the court likely was unaware of our order vacating the original mandate at the time it ruled, we are compelled to grant relief. Accordingly, we grant Starr's petition for review and remand this matter for further proceedings. We express no opinion, however, as to the merits of petitioner's claims or whether they may be precluded procedurally on grounds other than timeliness.

GARYE L. VÁSQUEZ, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

J. WILLIAM BRAMMER, JR., Judge